

REMARKS/ARGUMENTS

Claims 1-12 and 19-26 are active. Claims 13-18 have been withdrawn from consideration. Claims 21-23 find support on page 16, lines 15-22 of the specification. Claims 24-26 find basis in Table I on page 25 of the specification. No new matter has been added. Favorable consideration of this amendment and allowance of the application is respectfully requested.

Restriction/Election

Applicants previously elected with traverse, Group I, Claims 1-12, directed to a pH-sensitive polymer and a method of making it. Claims 13-18, directed to medicinal substances containing the pH-sensitive polymer, have been withdrawn from consideration. The Restriction Requirement has now been made FINAL. The Applicants respectfully request that the claims of the nonelected group which depend from or include all the limitations of those of elected Group I, be rejoined upon an indication of allowability for the elected claims, see MPEP 821.04.

Rejection—35 U.S.C. §103

Claims 1-12 and 19-20 stand rejected under 35 U.S.C. 103(a) as being obvious over Haddleton et al., U.S. Patent 5,804,632, in view of Rehmer et al., U.S. Patent No. 6,225,401. The Applicants respectfully request that this rejection be withdrawn for the reasons discussed in the previously filed responses and the Appeal and Reply Briefs.

Briefly, Haddleton and Rehmer do not disclose or suggest a polymer that “does not contain transition metal complexes” and which “brings about at least 60% haemolysis at pH 5.5, and less than 5% haemolysis at pH 7.4, at a concentration of 150 µg/ml in a cytotoxicity test with human red blood cells”.

The Examiner refers to the arguments in section 8 of the Official Action dated September 26, 2006. This section states:

. . .it is the examiner position to believe that the instantly claimed product, i.e. pH-sensitive polymer of Haddleton and Rehmer is substantially the same as pH-sensitive polymer recited in claim 1.

The Applicants have interpreted this statement as indicating that the Examiner believes the genus of polymers suggested by Haddleton and Rehmer (i.e., polymers produced using the ingredients of Haddleton, but polymerized using the “emulsion feed polymerization technique as taught by Rehmer) have substantially the same pH-sensitivity required of the polymers claimed by claim 1, namely that this genus of polymers “brings about at least 60% haemolysis at pH 5.5, and less than 5% haemolysis at pH 7.4, at a concentration of 150 µg/ml in a cytotoxicity test with human red blood cells”. However, the Applicants have previously shown that this is not the case, since polymer S-100 does not have these properties (see page 29, Table 4 of the specification which shows that S-100 does not bring about at least 60% haemolysis at pH 5.5.

If the Examiner is of the opinion that some (a subgenus) of the polymers within the alleged genus of polymers of Haddleton in view of Rehmer have the pH-sensitive properties required by claim 1, then some suggestion and reasonable expectation of success for selection of this subgenus of polymers must be pointed out to establish *prima facie* obviousness. Moreover, there must be some reasonable expectation of success in the prior art for the subgenus of polymers having these pH-sensitive properties.

Page 3 of the same Official Action also generally asserts that “it is within the skill of those in the art to find the optimum value of a results-effective variable” and page 6 indicates that the result effective variables mentioned in the Official Action pertain to the amounts of methacrylic acid, methacrylates and acrylates required to produce a copolymer. Thus, the results-effective variable relied on by the Examiner is not pertinent to the specific pH-

sensitive properties of the polymer of claim 1 and only concerns production of polymers falling within a broader genus which includes polymers like S-100 that do not have the pH-sensitivity required by claim 1. No result effective variable has been pointed out in the prior art which leads to the polymers of the invention. In view of the above arguments, the Applicants respectfully submit that this rejection should be withdrawn.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. An early notification to that effect is earnestly solicited.

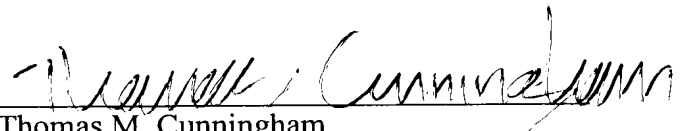
Respectfully submitted,

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